

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOSEPH GREGORY DUNBAR,

Plaintiff,

v.

JOHN PRELESNIK, *et al.*,

Defendants.

CASE NO. 1:13-CV-1100

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Brenneman's Report and Recommendation in this matter dated March 11, 2015 (docket # 44) and Plaintiff's Objections (docket # 45). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate judge's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

Plaintiff does not raise specific objections to the Report and Recommendation, or challenge in any specific way the analysis of the Report and Recommendation. The failure to

lodge specific objections is sufficient basis, standing alone, for this Court to adopt the Magistrate Judge's Report and Recommendation. See *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004) ("Generally, the failure to file specific objections to a magistrate's report constitutes a waiver of those objections."). Similarly, any new arguments Plaintiff makes in his Objections may be procedurally barred. Courts have held that while the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits de novo review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court new arguments or issues that were not presented to the magistrate judge. See *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998) (citing *Marshall v. Chater*, 75 F.3d 1421, 1426-27) (10th Cir. 1996) ("issues raised for the first time in objections to magistrate judge's report and recommendation are deemed waived")); see also *Swain v. Comm'r Social Security*, 379 F.App'x 512, 517-18 (6th Cir. June 7, 2010) ("A claim raised for the first time in objections to a magistrate judge's report is deemed waived.") (quotation marks omitted); *The Glidden Company v. Kinsella*, 386 F. App'x 535, 544, n. 2 (6th Cir. 2010) (explaining that while the Sixth Circuit has not "squarely addressed" whether a party may raise new arguments before a district judge that were not presented to a magistrate judge, the Sixth Circuit has indicated that a party's failure to raise an argument before the magistrate judge constitutes a waiver) (citing *Murr v. United States*, 200 F.3d 895, 902 n. 1 (6th Cir. 2000)); *Ward v. United States*, 208 F.3d 216, 216 (6th Cir. 2000).

Plaintiffs Objections fail on the merits as well as on procedural grounds. After de novo review, the Court finds that Magistrate Judge Brenneman's Report and Recommendation is factually sound and legally correct. The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. The Magistrate Judge's analysis of Plaintiff's motions and other filings seeking relief is entirely proper. Nothing in Plaintiff's Objections persuades the Court otherwise.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (docket # 44) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motions (docket ## 21, 22, 33, 35, 38, and 40) are **DENIED**.

/s/Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE

Dated: March 25, 2015